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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/823,261 | 04/13/2004 | Ketan N. Shah | J-3288A | 3491 |

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S.C. JOHNSON & SON, INC.
1525 HOWE STREET
RACINE, WI 53403-2236

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| EXAMINER |
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PASCUA, JES F

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| ART UNIT | PAPER NUMBER |
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3727

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,261

Applicant(s)

SHAH ET AL.

Examiner

Jes F. Pascua

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33 and 36-44 is/are rejected.
- 7) ☒ Claim(s) 34 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 33-44, in the reply filed on 04/21/2006 is acknowledged.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification lacks antecedent basis for the terminology "polyvinyl alcohol", "cellulose", "water sensitive gums" and "gum guar".

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 43 and 44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide an adequate written description of the "liquid sensitive material" to warrant claiming "polyvinyl alcohol", "cellulose", "water sensitive gums" and "gum guar".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 33 and 36- rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,059,036 to Richison et al. and U.S. Patent No. to Barthels et al.

Richison et al. discloses the claimed device except for the secondary closure 132 being including a layer of liquid sensitive material sandwiched between first and second porous layers of liquid insensitive material, wherein the layer of liquid sensitive material is porous when not exposed to liquid and non-porous when exposed to liquid. Fig. 2 of Barthels et al. discloses that it is known in the art to provide an analogous closure comprising a layer of liquid sensitive material 3 sandwiched between first and second porous layers of material 6, 12. The liquid sensitive material of Barthels et al. is disclosed as porous ceramic or large-pored plastic leather, which is rendered non-porous when impregnated with liquid. See column 2, line 67 through column 3, line 33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the secondary closure of Richison et al. with the closure of Barthels et al., in order to provide a pressure relief valve that readily responds at low overpressures.

As a note, Barthels et al. discloses the first and second layers of porous material 6, 12 being hermetically sealed together. See column 3, lines 60-65. The hermetic

sealing of the first and second layers 6, 12 implies that the material from which they are made is liquid insensitive.

In the alternative, Barthels et al. discloses the claimed device except for the closure of Fig. 2 being located on a bag having a primary closure provided at the top edges of the first and second sides. Richison et al. discloses that it is known in the art to provide an analogous closure on a bag having a primary closure provided at the top edges of the first and second sides. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Barthels et al. on a bag having a primary closure provided at the top edges of the first and second sides. Richison et al. teaches that it is known in the art to provide a bag having a primary closure provided at the top edges of the first and second side and secondary, pressure relief closure.

Regarding claims 36-42, Richison et al. and Barthels et al. discloses the claimed invention except for the specific material of the first and second layers of porous material 6, 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use applicant's claimed material to form the first and second layers of porous material in Barthels et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

7. Claims 34 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 43 and 44 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

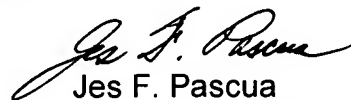
10. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments

made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP